Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

STEVEN RUSSO, JR.; SAMUEL J. REYES, PETITIONERS
v.
WILLIS CASEY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The following questions are presented by this petition:

1. When, for the purpose of application of the "continuing violation" doctrine in a § 1983 action, is an act of racial discrimination and retaliation for the exercise of the First Amendment rights of speech, association and petition for redress "too remote" from and "unrelated" to similar but time-barred acts preventing the revival of the time-barred claims?

2. If earlier, time-barred retaliatory and racially discriminatory acts are "too remote" from and "unrelated" to a similarly motivated and otherwise unbarred act, does the victim's failure to sue upon the earlier "remote" and "unrelated" acts effect a bar to recovery on the claim arising from the most recent act?

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Samuel J. Reyes and Steven Russo, Jr., by their attorneys, Robert E. Noel and Noel & Knoller, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit (San Francisco) in its case no. 93-15686.

PARTIES RESPONDENT

The following persons and entities are parties defendant below: Willis Casey, former Chief of Police of the City and County of San Francisco ("San Francisco"); Lawrence Minasian, Captain, San Francisco Police Department ("S.F.P.D."); D. Philpott, Captain, S.F.P.D.; Michael Dempsey, Sergeant, S.F.P.D.; Leroy Henry, Police Officer, S.F.P.D. and general manager of Lavinex Enterprises, Inc. a California corporation, dba Beijing Private Security and Consultants, Sassyfox Jewelry Unlimited, Rembrandt Tours and Events, Unlimited ("Lavinex"); Bitsy Henry, president of Lavinex; Lavinex Enterprises, Inc.; Charles Evans; Carlos Salgado; Sharon Brown; the John Stewart Company; Eli Gray; Western Security; and Unknown Captains, Nos. 1 through 5, S.F.P.D.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals, Noonan, Sneed and Trott, Circuit Judges, (App. A, infra, 3a) is not reported. The order of the court of appeals denying Petitioners' Petition for Rehearing (App. A, infra, 1a) is not reported. The orders of the U.S. District Court, Northern District of California, Vukasin, Judge, case no. C92-02686-JVC granting motions to dismiss (App. A, infra, 6a) are not reported.

JURISDICTION

The judgment of the court of appeals (App. A, infra, 2a) was entered on December 22, 1993. A timely petition for rehearing (filed January 5, 1994) was denied on February 9, 1994 (App. A, infra, 1a). Under the provisions of Rule 13.4, Supreme Court Rules, the time for filing a petition to this Court for a writ of certiorari expires on May 10, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND MUNICIPAL ORDINANCES INVOLVED

1. The First Amendment of the United States Constitution provides, in pertinent part:

> Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

2. The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. Title 42, United States Code, Section 1983, provides, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects,

or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

4. Section 312, California Code of Civil Procedure, enacted 1872, Amended by Stats. 1897, c. 21, p. 16, § 1, provides:

General limitations; special cases.

Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute.

5. Section 335, California Code of Civil Procedure and Section 340, California Code of Civil Procedure, enacted 1872, as amended, provide, in pertinent part:

§ 335. Periods of limitation

PERIODS OF LIMITATIONS PRESCRIBED. The periods prescribed for the commencement of actions other than for the recovery of real property are as follows:

* * *

§ 340. One year

Within one year:

* * *

(3) Libel, slander, assault, battery, false imprisonment, seduction, injury or death from wrongful act or neglect, forged or raised checks, injury to animals by feeder or veterinarian. An action for ... injury to or for the death of one caused by the wrongful act or neglect of another ...

4. Section 3.536, Charter of the City and County of San Francisco, provides, in pertinent part:

Patrol Special Officers

The police commission may appoint patrol special officers and for cause may suspend or dismiss said patrol special officers after a hearing on charges duly filed with the commission and after a fair and impartial trial ... Patrol special police officers who are designated by the police commission as the owners of a certain beat or territory ... or the legal heirs or representatives of said owners, may dispose of their interest in said beat or territory

to a person of good moral character, approved by the police commission and eligible for appointment as a patrol special police officer.

STATEMENT

1. Petitioners, Steven Russo, Jr. and Samuel J. Reyes, are each duly appointed San Francisco Patrol Special Police Officers. Each officer is Latino: Russo, Puerto Rican; Reyes, Mexican. In addition, Russo's wife is of Jordanian-Arab origin.

2. Patrol Special Police Officers are appointed, under the provisions of Section 3.536, San Francisco Charter, by the Police Commission of San Francisco as law enforcement officers authorized to provide augmented police services to clients within the confines of a designated geographical area ("beat"). Patrol Special Police Officers are compensated for these services by a fee negotiated between the officer and his or her client. The Patrol Special Police Officer pays for his or her own equipment and costs and expenses of operation and has the right to sell or transfer the beat or territory, subject to approval by the police commission. Prior to the wrongful acts of respondents toward Officers Russo and Reyes, the beats owned by each of them had a "going concern" value of not less than $1,000,000 (Complaint ¶ 25, App. B 17a).

3. Petitioners Reyes and Russo, respectively, are the president and the secretary of the San Francisco Patrol Special Police Officers Association (the "Association"), an organization of owners of San Francisco Patrol Special Police beats.

4. As members of the Association, Reyes and Russo were and are visibly active in asserting their property interests and rights and those of other Patrol Special Police Officers and beat owners. Reyes and Russo's activities included: a) maintenance through The Association of a petition in the Superior Court, City and County of San Francisco, Case No. 914756, for issuance of a writ of mandate to compel the City and County and its incumbent chief of police (prior to February 1992 Respondent Casey) to enforce restrictions upon the performance of police or security services by persons other than duly appointed patrol special police officers; b) written complaints and petitions within the Police Department to department officials, including Casey; and, c) attendance by Russo at public meetings of the Police Commission, including one on February 20, 1991. (Complaint ¶ 71, App. B 32a).

5. On June 30, 1990, Russo received at his business address a letter addressed to his business name but "ATTN: Captain Philpott" (the "Philpott Letter"). The letter was written by a client under contract to Russo for augmented police services and described as its subject: "... Off-duty Patrol Contract Services". It read, in pertinent part:

> "Dear Captain:
>
> "In reference to the contract services that I signed today, please be advised that I cannot authorize the total cost of $66,924.00. The property does not have "unlimited" funds available." (Complaint, ¶ 36; App. B 20a).

This letter clearly disclosed that Philpott, in violation of the Russo's rights under Section 3.536 of the Charter of the City and County of San Francisco was accepting significant sums of money to provide private patrol service within the confines of Russo's beat.

6. On February 20, 1991, Russo attended an open public community meeting of the Police Commission in the Park Station police district (the "Meeting"). At the Meeting a gentlemen ("Mr. Doe") of Arab origin, a friend and acquaintance of Russo, was present. Casey knew of Russo's friendship with Mr. Doe, Officer Russo's Puerto Rican heritage, Mrs. Russo's Arab heritage, and Officer Reyes' Mexican heritage. (Complaint ¶ 37, 38; App. B 20a, 21a).

7. Mr. Doe questioned Casey regarding the status of Patrol Special Police Officers and their assistants as peace officers, an issue central to the litigation pending between the San Francisco Patrol Special Police Officers' Association and the City. Casey answered reluctantly and evasively. The questioning caused Casey great embarrassment and anger and he attributed the questioning by Mr. Doe to Russo's instigation, holding Russo responsible for the questioning (Complaint ¶ 39; App. B 21a).

8. Immediately following the conclusion of the Meeting, Casey instructed Minasian, as Russo's commanding officer and the Captain commanding Park Station, to exact punishment upon Russo for the questioning by Mr. Doe (Complaint ¶ 40; App. B, 21a).

9. Carrying out Casey's instructions, Minasian returned to Park Station and upon his return acted "very paranoid and hysterical ... on a mission from the Chief" according to police Sergeant George Toy. At that time Sgt. Toy was acting Lieutenant at Park Station with twenty (20) years of service. Minasian gathered together Toy

and the other sergeants then on duty, including Defendant Dempsey. Minasian told the assemblage:

> "Russo! Russo took the Chief on in a hearing! We can't believe it! The chief was very upset! Russo!, that Arab!". "Russo and the Arab took the Chief on in the hearing and the Chief was very embarrassed and very pissed off".

Minasian further told the assembled sergeants that Casey had, in effect, "put out a hit on Russo" and that Minasian was there to fulfill that "hit" (Complaint ¶ 41; App. B 21a).

10. In an apparent reference to the Philpott letter, Minasian told the sergeants:

> "We [meaning Minasian and Casey] believe he [Russo] has the goods on a Captain and a Sergeant, some kind of corruption, we don't know what it is yet ... Thank god it's not me. Can't be me."

The captain upon whom Russo "had the goods" was Philpott (Complaint ¶ 41; App. B 21a).

11. On June 20, 1991, Sgt. Toy in a closed interview testified during a Management Control Division investigation, that the purpose of Casey's instruction to Minasian and Minasian's instructions to the assembled sergeants was to cause the officers of Park Station in particular and the San Francisco Police Department in general to ostracize Russo, refuse him back up and support and "to get him [Russo] hurt or killed" (Complaint ¶ 43; App. B 23a).

12. Following Minasian's direction, Dempsey volunteered to implement the punishment of Russo and to silence complaints or reports by Russo concerning Philpott's demand as shown in the Philpott letter (Complaint ¶ 44; App. B 23a).

13. The retaliatory campaign of harassment included:

a) acts of interference with the business operations and contracts of Russo causing the loss, prior to July 12, 1991, of two large accounts, MacDonald's Restaurant and St. Mary's Hospital (Complaint ¶ 45; App. B 23a);

b) attempts to "frame" Russo on false drug charges (Complaint, ¶ 48-50; App. B 24a-25a);

c) the setting of a vicious and violent convicted murderer and armed robber and his gang of thugs upon Russo to kill or seriously injure him. When this killer was arrested following his unsuccessful assault upon Russo, the vehicle owned and being driven by this vicious

killer contained a loaded pistol and numerous rocks of crack cocaine. The killer was released from custody by Minasian and Dempsey (Complaint ¶ 52-54; App. B 26a-27a), that assault, the loaded pistol and the rock cocaine notwithstanding;

d) the burglary of Russo's private vehicle while in the protected confines of Northern Police Station and the theft of cash and a note book containing information regarding defendants' activities. The note book was later observed by Sgt. Toy in the possession of the Management Control Division officer who interviewed him on June 20, 1991. The Management Control investigator telephoned Russo and offered to return the cash taken from Russo's car if Russo would forget about the burglary and theft (Complaint ¶ 51; App. B 25a);

e) interfering with and causing the breach, on July 12, 1991, of a contract secured by Russo and Reyes to provide augmented police services to a H.U.D. owned housing project, Geneva Towers Apartments (Complaint ¶ 59-67, 90; App. B 29a-31a, 36a).

14. The interference with Russo's business clients, which continued unabated through the date of filing the complaint below, was effected by the systematic contact of all of his clients for the purpose of causing them to cancel their contracts with Russo. The defendants did so through statements of rumor, untruths and innuendo concerning Russo's integrity, financial soundness, legal authority to operate and his overall general qualifications to perform the services which he contracted to perform, either falsely stating or implying to the persons contacted that he lacked integrity, financial soundness, general qualifications for his contracted services and/or the legal authority to undertake the services for which he contracted (Complaint ¶ 47; App. B 24a).

15. The attempt to "frame" Russo on false drug charges occurred on April 11, 1991, when Dempsey enlisted the cooperation of undercover police officer Paul Lee ("Lee") to act as a drug suspect. Dempsey arranged for Lee to conspicuously offer drugs for sale to passersby at a location under contract with Russo for augmented police services (Complaint ¶ 48; App. B 24a).

16. Russo found Lee, in plainclothes, in obvious possession of marijuana and cash indicating possession for sale. Russo placed Lee under arrest, calling for a unit to transport Lee for booking. Dempsey responded and transported Lee to Park Station (Complaint ¶ 49; App. B 25a).

17. During Russo's preparation of his report of the arrest of Lee and Russo's inventory of the drugs seized from Lee, Dempsey subjected Russo to constant harassment and interruption with the intended purpose of causing an error by Russo in the count of the drugs seized from Lee. In doing so, Dempsey, who had not been a witness to the arrest of Lee repeatedly insisted that Russo include in his written report false statements regarding what had transpired in the confrontation and arrest of Lee, all for the purpose of "framing" Russo on drug charges. Russo, on advice of Sgt. Toy, refused to falsify his report and Dempsey increased his harassment (Complaint ¶ 50; App. B 25a).

18. Unsuccessful in "placing the frame around" Russo with Lee, Dempsey, to implement the hit ordered by Casey, on April 27, 1991, engaged the participation of one David J. Chapman, Sr., a particularly vicious convicted murderer, armed robbery, drug dealer with felony arrests and conviction for being a felon in possession of firearms. On April 27, 1991, Chapman Sr.'s son, David Jay Chapman, Jr. was being held in the custody of the San Francisco Police Department on charges of possessing cocaine for sale and was under investigation as a suspect in connection with a murder which occurred in January, 1991. Chapman Jr. was subsequently convicted on his plea of guilty to the cocaine charge and was convicted of after trial on the murder charge. Casey and his followers used threats and/or promises in connection with favorable treatment of Chapman, Jr. to induce Chapman, Sr. to effect the "hit" on Russo (Complaint ¶ 52; App. B 26a).

19. On April 27, 1991, Russo again received a pager message that there was trouble at the same building at which he had arrested undercover Lee on April 11, 1991. The report was that five or six males were apparently attempting to gain entrance to the building. Upon arriving at the building, Russo observed a group of five or six males cross the street from in front of the building to the opposite corner and begin a dice game. As Russo began to write a citation for a truck parked on the sidewalk in front of the building so that it blocked and completely obstructed the entrance to his client's building, the group of five or six males re-crossed the street. Chapman, Sr., among this group, then threatened him, got into the truck for which Russo was writing a citation, started the engine and deliberately backed the truck toward Russo with the obvious intention of

pinning Russo between the back of Chapman's truck and the side of Russo's car. When Russo drew his pistol, announced that Chapman, Sr. was under arrest and threatened to put a bullet in Chapman's head, Chapman, Sr. fled the scene to be later arrested by other officers of the San Francisco Police Department. A search of Chapman's truck resulted in the discovery of rock cocaine and a loaded pistol in the truck. The assault, the loaded pistol, the crack cocaine and Chapman's criminal record, notwithstanding, Dempsey and Minasian released Chapman, Sr. from custody and preferred administrative charges against Russo for drawing his weapon and allegedly kicking Chapman's truck during the incident. Chapman, Sr. was not charged (Complaint ¶ 53; App. B 27a).

20. On the next day Chapman, Sr. again confronted Russo, telling Russo that Russo's supervisor, i.e. Dempsey, "wants me to fight you" (Complaint ¶ 54; App. B 27a).

21. The interference with Russo's and Reyes' efforts to acquire the contract for police services at the H.U.D. housing project was described by one employee of H.U.D.'s management company, The John Stewart Company, as originating in the office of then Chief of Police Casey and involving at least five captains of police. John Stewart Company, prior to becoming manager of Geneva Towers, was a client of Russo's. On May 30, 1991, Russo, in conjunction with Reyes within whose beat Geneva Towers was located, and the John Stewart Company entered into an agreement for Russo and Reyes to provide augmented police services for Geneva Towers. Between May 30, 1991, and the scheduled start date for Russo and Reyes to begin their service, Casey's office and the various police captains contacted the John Stewart Company and told its contract officer that if Russo and Reyes were permitted to perform the work, the San Francisco Police Department would withhold all police services for the H.U.D. project. Initially receiving favorable comments from the district captains with respect to Russo and Reyes, the contracting officer, defendant Brown, after the contact from Casey's office, experienced a withdrawal of the favor recommendations (Complaint ¶ 59, 60; App. B 29a).

22. Brown was told by the police captains, including Philpott and Casey's office, that a group other than Russo and Reyes should be selected to provide augmented police protection for Geneva Towers Apartments. This other group was described as "being affiliated

with the police department" and consisted of off-duty San Francisco Police Officers. Brown was told that this group would be supported by and was endorsed by Casey as chief of police. This group consisted of LAVINEX, Mrs. Henry, Henry, Salgado and Evans and was a "front" for Casey, Philpott, Minasian and the other captains (Complaint ¶ 63; App. B 30a).

23. The loss by Russo and Reyes of the Geneva Towers contract occurred on July 12, 1991, when Russo received a telephone call from Ms. Brown of the John Stewart Company and was told John Stewart Company would not proceed with the contract because of the threats by Casey, Philpott and others (Complaint ¶ 90; App. B 36a). Russo and Reyes sustained a loss of $2,500,000 over the life of the contract (Complaint ¶ 67; App. B 31a).

24. The decision of both the district court (App. A 6a-8a) and the court of appeals (December 22, 1993, App. A 3a) are founded upon an erroneous and wholly unsupported assumption of fact, i.e.:

All retaliatory acts alleged in the complaint took place prior to June 20, 1991.

25. The district court and the court of appeals each erroneously determined that though Petitioners had been told for the first time on July 12, 1991, within one year of the filing of the complaint, of the decision by John Stewart Company to breach its contract with Petitioners because of Casey's retaliation, that act "was too remote and unrelated to the many prior time-barred acts of which they had knowledge in March and April 1991 .." and thus not a continuing violation. Notwithstanding that each court concluded that this retaliatory act was unrelated to all others, each held that Petitioners could not maintain their action, timely as to this retaliatory act, because of their presumed knowledge of the earlier "unrelated" and "too remote" acts.

26. Petitioners timely petitioned the court of appeals for rehearing which was denied on February 9, 1994 (App. A infra, 1a).

REASONS FOR GRANTING THE PETITION

1. In their application of the "continuing violation" doctrine with respect to the statute of limitations in this § 1983 action, the district court and the court of appeals have effectively converted a statute of repose into a hunting license to defendants, such as those here, whether clothed in the honorable navy blue of the San Francisco

Police Department or the white sheets and hoods of thugs and nightriders, to harass, pillage, plunder, threaten and set vicious murderers upon those they choose as their victims. The "continuing violation" doctrine brings otherwise time-barred claims within the scope of actionable wrongs where the cause of action for the last wrongful act accrues within the limitations period. That notwithstanding, the district court and the court of appeals in this case, in conflict with every other circuit considering the application of the doctrine, has applied it so as to put outside of the scope of actionable wrongs an otherwise actionable claim accruing within the statutory period.

2. Casey, Police Chief of San Francisco, against whom Russo and Reyes stood publicly in their roles as president and secretary of the San Francisco Patrol Special Police Officers' Association and its litigation against the San Francisco Police Department, ordered Minasian, Russo's commanding officer, in the words of a sergeant of police to whom Minasian related the order, "to put a hit on Russo"-- i.e., to get Russo "hurt" or "killed". The campaign against Russo included: defendant Dempsey's attempt to "place a frame around" Russo on false drug charges, the setting upon Russo of a three time convicted felon-murder, armed robbery, felony possession of a fire arm-David Chapman and his cronies, the burglary of Russo's auto and theft of his cash and notebook; and Minasian and others causing so much interference with Russo's existing clients that he lost two, McDonald's and St. Mary's Hospital. These acts and the damage resulting from them occurred prior to July 11, 1991 and Russo learned of the injury prior to that date. When Reyes joined with Russo to contract for augmented police services at the H.U.D. owned housing project, Geneva Towers Apartments, Reyes as well became a victim of the campaign and he and Russo were deprived of the $2,500,000 contract. This loss, inflicted as a result of Casey's retaliatory and ethnically inspired animus, occurred on July 12, 1991, when Russo was told that, because of imprecations from Casey and various and numerous police captains, including defendant Philpott, H.U.D.'s management company would not honor its contract with Russo and Reyes.

3. This court has determined that the appropriate statute of limitations for a § 1983 claim is the forum states' general personal injury statute. Wilson v. Garcia 471 U.S. 261, 280 (1983). In this

action, the appropriate state statute of limitations is that contained in § 312, § 335 and § 340(3), California Code of Civil Procedure--one year. McDougal v. County of Imperial, 942 F. 2d 668, 673 (9th Cir. 1991); McMillan v. Goleta Water Dist., 792 F. 2d 1453, 1456 (9th Cir. 1986). The one year period provided does not, under the statute, begin to run against a claim until that claim has "accrued". § 312, California Code of Civil Procedure; Travelers, Exp. Co., Inc. v. Cory, 664 F. 2d 763 (9th Cir. 1981).

4. Though federal courts look to the forum state to prescribe the statute of limitations applicable to § 1983 actions, federal law determines when the claim asserted accrues. Lavellee v. Listi, 611 F. 2d 1129, 1130 (5th Cir. 1980).

5. For federal purposes, this Court and a significant number of courts of appeals hold that a claim accrues when a plaintiff knows or should know: a) that he or she has sustained an injury; and, b) the identity of the person inflicting the injury. United States v. Kubrick, 444 U.S. 111, 122 (1979); Hull v. Cuyahoga Valley Bd. of Educ., 926 F. 2d 505, 510 (6th Cir. 1991); Mullinax v. McElhenney, 817 F. 2d 711, 716 (11th Cir. 1987) ; Barrett v. United States, 689 F. 2d 324, 330 (2nd Cir. 1982); Lavellee v. Listi, 611 F. 2d 1129, 1131 (5th Cir. 1980). See also: Delaware State College v. Ricks, 449 U.S. 250, 259 (1980): "... the limitations periods commenced to run when the tenure decision was made and Ricks was notified...".

6. In its affirmation of the district court in this action, the Ninth Circuit, though citing its earlier decision in Compton v. Ide, 732 F. 2d 1429, 1433 (9th Cir. 1984) in support of its action (App. A 4a) has renounced that holding and placed itself in conflict with the decisions of this court and the other courts of appeals. Acknowledging (App. A 5a) that Reyes and Russo have pleaded that they "... discovered that defendants ... induced a client to breach a security services contract within the statute of limitations on July 12, 1991 ..." the court of appeals nevertheless held (ibid.) "... their action is still time-barred...". The degree of conflict and renunciation is clear from a comparison of the court of appeals' decision with that of the Eleventh Circuit in Mullinax, supra, at 716:

> ... Section 1983 actions do not accrue until the plaintiff knows or has reason to know that he has been injured ... Nor will a Section 1983 action accrue until the plaintiff is aware or should have been aware who has inflicted the injury ... [T]he district

court erred in dismissing this action as time-barred simply because both entrapment attempts occurred prior to August 10, 1982. Instead, it should have looked to when Mullinax first realized that she had been injured and that Keller and Sticher had inflicted that injury. Under that standard, any cause of action arising out of the entrapment attempts accrued after August 10, 1982.

7. The complaint in this case does not specify, in the § 1983 action (App. B), the date upon which Russo and Reyes were informed by H.U.D.'s management company that, as a result of imprecations by Casey and his band, the contract will not be honored. The only mention for the date of this occurrence appears in the Complaint (Fifth Claim, ¶ 90, App. B 36a):

> ... It was only on or after July 12, 1991 that Plaintiffs learned that the reason for the delay ... was the interference of Casey, Minasian [etc] ... On July 12, 1991, Plaintiffs were told by Brown ... that JSC was refusing to go forward with the performance of the contract between JSC on the one hand and Russo and Reyes on the other ...".

8. It is undisputed that at least one overt wrongful act resulted in the infliction, in violation of § 1983, of injury or damage upon Petitioners on July 12, 1991. It is also undisputed that on that date Russo and Reyes learned of both the injury and the identity of the persons causing it. Even assuming, arguendo, the inappositeness of the "continuing violation doctrine", a separate, independent claim accrued on that date with respect to which the complaint in this action was timely. United States v. Kubrick, 444 U.S. 111, 122 (1979); Mullinax v. McElhenney, 817 F. 2d 711, 716 (11th Cir. 1987). Dismissal and affirmance of the dismissal was improper where, as here, "... it [does not] appear ... beyond doubt that plaintiff can prove no set of facts ... which would entitle him to relief". Sosa v. Hiraoka, 920 F. 2d 1451, 1455 (9th Cir. 1990).

9. The decisions of the district court and the court of appeals are in conflict with those of this court and the other circuits on the issue of the time of accrual of a claim under § 1983. Inherent in their holdings that the claim based upon retaliatory interference with the Geneva Towers contract is untimely, is a rejection of the holdings on accrual of claims articulated in United States v. Kubrick, supra; Hull v. Cuyahoga Valley Bd. of Educ, supra; Mullinax v.

McElhenney, supra; Barrett v. United States, supra; Lavellee v. Listi, supra; Delaware State College v. Ricks, supra.

10. The decisions below are in conflict with the holdings of this court and those of the other circuits regarding whether a series of wrongful acts, some outside and some inside the period of limitations, are "too remote" and "unrelated" under the "continuing violation" doctrine. In Havens Realty Corp. v. Coleman, 455 U.S. 363, 380-381 (1982) this court held that plaintiffs who brought suit under Section 804 of the Fair Housing Act, 42 U.S.C. Section 3604, alleging that the defendants engaged in "racial steering" could recover on all five violations alleged even though four of the five incidents occurred outside the 180 - day limitations period set forth in the statute. The court held that all of the individual incidents were actionable, if the unlawful practice continued into the limitations period:

> "... Plainly the claims ... are based not solely on isolated incidents involving the two respondents, but a continuing violation manifested in a number of incidents -- including at least one ... that is asserted to have occurred within the 180 day period..." 455 U.S. at p. 381.

See also Hull v. Cuyahoga Valley Bd. of Educ., 926 F. 2d 505, 510 (6th Cir. 1991), applying Havens. In the instant case, what the courts below held to be "too remote" and "unrelated" to the July 12, 1991 interference with the Geneva Towers contract were in fact acts which included two acts of interference with separate contracts--McDonald's and St. Mary's Hospital--occurring in April 1991, only three months before the July interference with the Geneva Towers contract. In Havens, four of the five acts occurred more than six (6) months before the one act occurring within the limitations period.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted.

Robert E. Noel
Attorney for Petitioners

Marjorie F. Knoller
Noel & Knoller
Attorneys

May, 1994

APPENDIX A
THE DECISIONS BELOW

I. UNITED STATES COURT OF APPEALS, NINTH CIRCUIT, No. 93-15686:

A. ORDER, PETITION FOR REHEARING, FILED FEBRUARY 9, 1994:

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEN RUSSO, JR.; SAMUEL J. REYES,	)	No. 93-15686
	)	D.C.No.CV-92-02686-JPV
	)	Northern California
Plaintiffs-Appellants	)	(San Francisco)
v.	)	
	)	ORDER
WILLIS CASEY, et al.,	)	
	)	
Defendants-Appellees.	)	
	)	

Before: SNEED, NOONAN, and TROTT, Circuit Judges.
The petition for rehearing is denied.

B. ORDER, FILED AND ENTERED DECEMBER 22, 1993:

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 93-15686
CT/AG#: CV-92-02686-JPV

STEVEN RUSSO, JR.; et al.

Plaintiffs - Appellants

v.

WILLIS CASEY, et al.

Defendants - Appellees

APPEAL FROM the United States District Court for the Northern District of California (San Francisco).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California (San Francisco) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered December 22, 1993.

C. MEMORANDUM OPINION FILED AND ENTERED DECEMBER 22, 1993:

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEN RUSSO, JR.; SAMUEL J. REYES,	No. 93-15686
Plaintiffs-Appellants	D.C.No.CV-92-02686-JPV
v.	MEMORANDUM*
WILLIS CASEY, et al.,	
Defendants-Appellees.	

Appeal from the United States District Court
for the Northern District of California
John P. Vukasin, Jr., District Judge, Presiding

Submitted December 6, 1993**

Before: SNEED, NOONAN, and TROTT, Circuit Judges.

Stephen Russo and Samuel Reyes, "Patrol Special Police Officers"[1] appeal the district court's order granting the defendants' motion to dismiss their 42 U.S.C. §1983 action as time-barred. Russo and Reyes claim that their constitutional rights were violated when former San Francisco Police Chief Willis Casey and nine members of the police department allegedly engaged in a

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

[1] Patrol Special Police Officers are law enforcement officers appointed by the San Francisco Police Commission authorized to provide augmented police services to clients within their beat, in exchange for compensation. These officers are subject to supervision and discipline by the Police Department.

campaign of retaliation and harassment against them after they embarrassed the police chief at a public hearing. We have jurisdiction under 28 U.S.C. §1291. We affirm.

We review de novo the district court's dismissal of a complaint on statute of limitations grounds. Gibson v. United States, 781 F. 2d 1334, 1337 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987).

In California, §1983 claims are subject to the one-year limitations period set by California Code of Civil Procedure §340. McDougal v. County of Imperial, 942 F. 2d 668, 673 (9th Cir. 1991); Usher v. City of Los Angeles, 828 F. 2d 556, 561 (9th Cir. 1987). Although state law prescribes the statute of limitations applicable to §9883 claims, federal law governs time of accrual. Gibson, 781 F. 2d at 1340. Thus, for §1983 claims, a cause of action accrues and the statutes of limitations begins to run from when a plaintiff knows or has reason to know of the injury that is the basis for the action. Alexopulos v. San Francisco Unified School Dist., 817 F. 2d 551, 555 (9th Cir. 1987); Compton v. Ide, 732 F. 2d 1429, 1432 (9th Cir. 1984). However, the statute of limitations is tolled under the continuing violation doctrine if the plaintiff can show either (1) a discriminatory system or policy that operated at least in part within the limitations period; or (2) a series of closely related acts against a single individual, one or more of which falls within the limitations period. Green v. Los Angeles County Superintendent of Schools, 883 F. 2d 1472, 1480 (9th Cir. 1989).

Here, Russo and Reyes filed their complaint on Monday, July 13, 1992. Therefore, the filing of the complaint was timely as to any cause of action accruing on or after July 11, 1991. See McDougal, 942 F. 2d at 673; Usher, 828 F. 2d at 561. However, the plaintiffs make numerous allegations in their complaint which show that they knew, or should have known of facts supportive of their §1983 claim before July 11, 1991:

(1) In March 1991 Russo and Reyes learned from one Sergeant Toy that the defendants planned a campaign of harassment against them for allegedly embarrassing the police chief;

(2) In March 1991 defendants allegedly ruined Russo and Reyes' business relationship with two of their largest accounts by spreading rumor and innuendo concerning their business integrity;

(3) On April 11, 1991 defendants allegedly hired an undercover policeman disguised as a drug dealer to be arrested by Russo so that

defendants could frame Russo on false drug charges;

(4) On April 22, 1991 defendants allegedly broke into Russo's car, stealing a personal notebook and $600;

(5) On April 27, 1991 defendants allegedly directed one David Chapman to attempt to injure Russo during a street confrontation set up by defendants.

Thus, although Russo and Reyes discovered that defendants allegedly induced a client to breach a security services contract within the statute of limitations on July 12, 1991, their action is still time-barred. See Alexopulos, 817 F. 2d at 555; Compton, 732 F. 2d at 1432.

Moreover, the plaintiffs' contention that the "continuing violation theory" tolls the statute of limitations in their action lacks merit. Even though Russo and Reyes' discovery of the July 12, 1991 contract breach occurred within the limitations period, the event was too remote from and unrelated to the many prior time-barred acts of which they had knowledge in March and April 1991. See Green, 883 F. 2d at 1480.

Accordingly, because the plaintiffs' cause of action accrued when they acquired actual knowledge of retaliatory acts in March and April 1991 and the doctrine of continuing violation does not apply, the district court did not err by dismissing this 42 U.S.C. §1983 action as time-barred.

Affirmed.

II. UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA:

A. ORDER FILED MARCH 12, 1993,
ENTERED MARCH 15, 1993:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVEN RUSSO, JR.; SAMUEL J. REYES, Plaintiffs v. WILLIS CASEY, et al., Defendants	C-92-02686-JPV ORDER GRANTING DEFENDANTS JOHN STEWART COMPANY AND ELI GRAY'S MOTION TO DISMISS

INTRODUCTION

Defendants John Stewart Company and Eli Gray brought a motion to dismiss plaintiff's complaint, scheduled to be heard on March 4, 1993. After a review of the briefs, this court found it appropriate to submit the motion without oral argument pursuant to Local Rule 220-1, and now GRANTS the motion.

BACKGROUND

Plaintiffs filed this suit against several officers of the San Francisco Police Department, alleging causes of action for violations of their federal civil rights under 42 U.S.C. §1983. The complaint also alleges state law claims against the officers, and against several businesses and individual defendants as well. These included breach of contract claims against defendants John Stewart Company and Eli Gray.

In its order of October 19, 1992, this court dismissed the §1983 claims against the officer defendants and declined to exercise supplemental jurisdiction over the state law claims against those defendants. Defendants Stewart Company and Eli Gray now move this court to decline to exercise supplemental jurisdiction over the state law claims alleged against them.

DISCUSSION

Title 28 U.S.C. §1367(c)(3) provides that a district court may decline to exercise supplemental jurisdiction over a state law claim where all claims over which it has original jurisdiction have been dismissed.

In United Mine Workers v. Gibbs, the Supreme Court stated that "if the federal claims are dismissed before trial, although not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." 383 U.S. 715, 726-27 (1966).

In the October, 1992 Order granting the police officer's motion to dismiss, this court dismissed all of the federal claims that were alleged in plaintiffs' complaint. All that now remains are state law claims alleged against defendants Stewart Company and Eli Gray.

Pursuant to 28 U.S.C. §1367(c)(3) and Gibbs, this court declines to exercise supplemental jurisdiction over the state law causes of action alleged against Steward Company and Eli Gray. Consequently, the motion to dismiss brought by defendants Stewart Company and Eli Gray is granted.

In so granting the motion, this court dismisses the last remaining defendants.[1] Accordingly, the clerk of the court is ordered to terminate this action upon filing this Order. Plaintiff is free to pursue his state claims in a state forum.

CONCLUSION

In accordance with the foregoing discussion, IT IS HEREBY ORDERED as follows:

1. The motion to dismiss brought by defendants the John Steward Company and Eli Gray is hereby GRANTED.

2. The clerk of the court is hereby ordered to TERMINATE this case.

IT IS SO ORDERED.

DATED: MAR 12 1993

/S/

J.P. VUKASIN, JR.
UNITED STATES DISTRICT JUDGE

[1] Plaintiffs also brought suit against five unnamed police sergeants. As the Federal Rules of Civil Procedure do not provide for suits against fictitious or unknown defendants, this court must disregard the causes of action alleged against the unnamed sergeants.

B. ORDER FILED AND ENTERED OCTOBER 19, 1992:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVEN RUSSO, JR. and SAMUEL J. REYES,	) No. C-92-2686-JPV
Plaintiffs	) ORDER GRANTING DEFENDANTS' CASEY, MINASIAN, PHILPOTT, DEMPSEY, LEROY HENRY AND BITSY HENRY'S MOTION TO DISMISS UNDER FRCP 12(B) (6) AND DENYING MOTION FOR A MORE DEFINITE STATEMENT UNDER FRCP 12(E) AS MOOT
v.	
WILLIS CASEY, et al.,	
Defendants	

INTRODUCTION

The following defendants brought a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) and a Motion for a More Definite Statement under Federal Rule of Civil Procedure 12(e) before this Court: Willis Casey, Lawrence Minasian, D. Philpott, Michael Dempsey, Carlos Salgado, Sharon Brown, Leroy Henry and Bitsy Henry,[1] scheduled to be heard on October 1, 1992. After review of the briefs, this Court submitted the motion without oral argument pursuant to Local Rule 220-1, and now GRANTS the Motion to Dismiss, and DENIES as moot the Motion for More Definite Statement.

[1] The following Defendants have not joined in these motions: John Stewart Company, Eli Gray Western Security, and Unknown Captains 1 through 5.

BACKGROUND

Plaintiffs Russo and Reyes are "patrol special police officers," appointed by the Police Commission of the City and County of San Francisco. Patrol special officers are authorized to provide augmented police services to clients within their "beat" in return for compensation. Defendants Casey, Minasian, Dempsey, Philpott and Unknown Captains 1 through 5 were at the time of events giving rise to plaintiffs' cause of action employees of the San Francisco Police Department ("S.F. Police defendants").

The plaintiffs allege that the S.F. Police defendants were engaged in a campaign of harassment and interference with the plaintiffs' police services contracts. The plaintiffs assert that this retaliatory campaign was in response to the exercise of the plaintiffs' constitutionally guaranteed First Amendment rights of free speech, free assembly and the right to petition for the redress of grievances, and furthermore in violation of the plaintiffs' constitutional right to equal protection under the Fourteenth Amendment. All retaliatory acts alleged in the complaint took place prior to June 20, 1991.

The plaintiffs filed a complaint seeking relief for 1) violation of 42 U.S.C. §1983; 2) tortious interference with business advantage; 3) unfair trade practices under California Civil Code §3426.1; unfair business competition under California Business & Professions Code §17200; and 5) breach of contract. Defendants Casey, Minasian, Philpott, Dempsey, Leroy Henry and Bitsy Henry subsequently filed a motion to dismiss under Federal Rule of Civil Procedure 12(b) (6) and a motion for a more definite statement under Federal Rule of Civil Procedure 12(e) which are presently before this Court.

STANDARD FOR A RULE 12(b) 6 MOTION TO DISMISS

For purposes of a motion to dismiss, a complaint is construed in a light most favorable to the plaintiff and all properly pleaded factual allegations are taken as true. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). A motion to dismiss should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

DISCUSSION

The defendants who brought these motions contend that the plaintiffs' §1983 claim is barred by the statute of limitations. In California, §1983 claims are subject to the one-year limitations period set by California Code of Civil Procedure §340. Furthermore, the day of accrual is not included and the last day of the period is included, unless the last day falls on a Saturday, Sunday or legal holiday, in which case, the statute is tolled until the next business day. Plaintiffs filed their complaint on Monday July 13, 1992. Therefore, the filing of plaintiffs' complaint was timely as to any cause of action accruing on or after July 11, 1991.

Federal law determines when a cause of action accrues. §1983 claims accrue "when a plaintiff knows or has reason to know of the injury which is the basis of his action." Compton v. Ide, 732 F. 2d 1429, 1432 (9th Cir. 1984).

Plaintiffs became aware of the retaliatory campaign giving rise to this cause of action through information given Russo by an associate, Sergeant Toy. The complaint alleges that plaintiff Russo made notations of Sergeant Toy's statements regarding this campaign in a notebook prior to that notebook's theft on April 22, 1991. Therefore, because Russo spoke to Sergeant Toy before April 22, 1991, this Court must conclude that plaintiffs' claim accrued before July 11, 1991 and that consequently their claim is time-barred.

The plaintiffs nonetheless argue that they were unaware of the full scope of the retaliatory campaign until July 12, 1991. In support, the plaintiffs state that it not until July 12, 1991 that they learned that as part of this campaign the S.F. Police defendants induced a breach of the plaintiffs' contract for special police services entered into with Geneva Towers Apartments.

The Ninth Circuit rejected a similar argument in Compton v. Ide, 732 F. 2d 1429, 1433 (9th Cir. 1984). Compton established that a plaintiff need not know of each specific harmful act in a pattern of wrongful conduct for a §1983 cause of action to accrue. So long as all wrongful acts took place within the limitations period, and the plaintiff had some knowledge of the wrongful conduct within that limitations period, "it is not necessary that he have knowledge of all the details or all of the persons involved" for the claim to be time-barred. Id. Therefore, this Court finds that the plaintiffs' cause of

barred. Id. Therefore, this Court finds that the plaintiffs' cause of action accrued when the plaintiffs acquired actual knowledge of retaliatory acts in April, 1991. The limitations period is not extended by this later discovery.

The plaintiffs ask this Court to take judicial notice of a San Francisco Police Commission Report filed in April, 1992 enumerating certain charges against Russo. Plaintiffs' argue that these charges are somehow part of this retaliatory campaign. This Court finds the plaintiffs' argument meritless. Neither the Police Commission, the City and County of San Francisco, nor the Chief of Police who brought these charges are defendants in this action. No connection between these Commission charges and the defendants in this action is made; these charges are nowhere mentioned in the plaintiffs' complaint. Thus, these later charges represent an unrelated act by non-parties to this case. See Green v. Los Angeles County Superintendent of Schools, 883 F. 2d 1472 (9th Cir. 1989).

This Court accordingly finds dismissal of the §1983 claim appropriate. A request was made in the defendants' briefs for sanctions under Rule 11. That request is denied. Under 28 U.S.C. §1367(c)(3), this Court also declines to exercise supplemental jurisdiction over the remaining state law claims.

ORDER

In accordance with the foregoing discussion, IT IS HEREBY ORDERED that:

1. Defendants Casey, Minasian, Philpott, Dempsey, Salgado, Evans, Leroy Henry, and Bitsy Henry's Motion to Dismiss is GRANTED.

2. Defendants Casey, Minasian, Philpott, Dempsey, Leroy Henry, and Bitsy Henry's Motion for a More Definite Statement is DENIED as moot.

3. Defendants Casey, Minasian, Philpott, Dempsey, Leroy Henry, and Bitsy Henry's request for Rule 11 sanctions is DENIED.

DATED: OCT. 19, 1992

/S/

J.P. VUKASIN, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX B

Robert E. Noel, SB# 68477 Law Offices of Robert E. Noel One Sansome Street, Ste. 1900 Mailing Address: Post Office Box 472589 San Francisco, CA 94147-2589 Telephone: (415) 441-7676 FAX: (415) 441-7009 Attorneys for Plaintiffs Steven Russo, Jr. & Samuel Reyes.	)	Filed: July 13, 1992.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN RUSSO, JR. and SAMUEL J. REYES, Plaintiffs, Vs. WILLIS CASEY, former Chief of Police, City & County of San Francisco, in his individual capacity; CAPTAIN LAWRENCE MINASIAN, San Francisco Police Department, in his individual capacity; CAPTAIN D. PHILPOTT, San Francisco Police Department, in his individual capacity; UNKNOWN CAPTAIN NO. 1, San Francisco Police Department,	CASE NO. C92-2686-JPV COMPLAINT FOR: DAMAGES: A. Civil Rights Violations, 42 U.S.C. 1983; B. Interference With Business Advantage; C. Unfair Trade Practices-Trade Secrets. INJUNCTIVE RELIEF: D. Unfair Business Practices, Sec. 17200, Cal. B&P Code. E. Breach of Contract-Damages

in his individual capacity;)
UNKNOWN CAPTAIN NO. 2,)
San Francisco Police Department,)
in his individual capacity;)
UNKNOWN CAPTAIN NO. 3,)
San Francisco Police Department,)
in his individual capacity;)
UNKNOWN CAPTAIN NO. 4,)
San Francisco Police Department,)
in his individual capacity;)
UNKNOWN CAPTAIN NO. 5,)
San Francisco Police Department,)
in his individual capacity;)
Sergeant MICHAEL DEMPSEY,)
San Francisco Police Department,)
in his individual capacity;)
OFFICER LEROY HENRY,)
San Francisco Police Department,)
in his individual capacity and)
as "General Manager" of)
LAVINEX ENTERPRISES, INC.,)
a California Corporation, doing)
business as Beijing Private)
Security And Consultants,)
Sassyfox Jewelry Unlimited,)
Rembrandt Tours and Events)
Unlimited; BITSY M. HENRY,)
individually and as president)
LAVINEX ENTERPRISES INC.)
a California Corporation, doing)
business as Beijing Private)
Security And Consultants,)
Sassyfox Jewelry Unlimited,)
Rembrandt Tours and Events)
Unlimited; LAVINEX ENTERPRISES)
INC. a California Corporation,)
doing business as Beijing)
Private Security And)
Consultants, Sassyfox Jewelry)

Unlimited, Rembrandt Tours And	)
Events Unlimited; CHARLES EVANS	)
CARLOS SALGADO; SHARON BROWN;	)
JOHN STEWART COMPANY; ELI GRAY	)
WESTERN SECURITY;	)
	) **JURY DEMAND**
Defendants.	)

The Plaintiffs, Steven R. Russo, and Samuel Reyes ("Plaintiffs"), by their undersigned attorneys, for their complaint against the Defendants say:

PARTIES AND SIGNIFICANT NON-PARTIES

1. The Plaintiff, Samuel Reyes ("Reyes"), is an individual residing in the City and County of San Francisco, California.
2. The Plaintiff, Steven R. Russo ("Russo"), is an individual residing in the City and County of San Francisco, California.
3. Defendant Willis Casey ("Casey"), formerly chief of police of the City and County of San Francisco, California, is sued in his individual capacity.
4. Defendant Captain Lawrence Minasian ("Minasian"), commanding officer, Park Station, San Francisco Police Department, is sued in his individual capacity.
5. Defendant Captain Darmont Philpott ("Philpott"), San Francisco Police Department, is sued in his individual capacity.
6. Defendant Unknown Captain No. 1 ("Captain No. 1") is a captain in the San Francisco Police Department, and is sued in his or her individual capacity. The true name of Captain No. 1 is not known to the Plaintiffs but is one of five captains of the San Francisco Police Department who contacted and spoke with Defendant Sharon Brown regarding the contract between Plaintiffs and the John Stewart Company as set forth below. Captain No. 1 may hold the rank of "Commander" and at all times mentioned herein was assigned to the office of Casey while Casey was Chief of Police.
7. Defendant Unknown Captain No. 2 ("Captain No. 2") is a captain in the San Francisco Police Department, and is sued

in his or her individual capacity. The true name of Captain No. 2 is not known to the Plaintiffs but is one of five captains of the San Francisco Police Department who contacted and spoke with Defendant Sharon Brown regarding the contract between Plaintiffs and the John Stewart Company as set forth below.

8. Defendant Unknown Captain No. 3 ("Captain No. 3") is a captain in the San Francisco Police Department, and is sued in his or her individual capacity. The true name of Captain No. 3 is not known to the Plaintiffs but is one of five captains of the San Francisco Police Department who contacted and spoke with Defendant Sharon Brown regarding the contract between Plaintiffs and the John Stewart Company as set forth below.
9. Defendant Unknown Captain No. 4 ("Captain No. 4") is a captain in the San Francisco Police Department, and is sued in his or her individual capacity. The true name of Captain No. 4 is not known to the Plaintiffs but is one of five captains of the San Francisco Police Department who contacted and spoke with Defendant Sharon Brown regarding the contract between Plaintiffs and the John Stewart Company as set forth below.
10. Defendant Unknown Captain No. 5 ("Captain No. 5") is a captain in the San Francisco Police Department, and is sued in his or her individual capacity. The true name of Captain No. 5 is not known to the Plaintiffs but is one of five captains of the San Francisco Police Department who contacted and spoke with Defendant Sharon Brown regarding the contract between Plaintiffs and the John Stewart Company as set forth below.
11. Defendant Sergeant Michael Dempsey ("Dempsey") is a sergeant in the San Francisco Police Department and is sued in his individual capacity.
12. Defendant Officer Leroy Henry ("Henry"), is an officer in the San Francisco Police Department and is the self-described "general manager" of Defendant LAVINEX ENTERPRISES, INC., a California Corporation, doing business as Beijing Private Security And Consultants, Sassyfox Jewelry Unlimited and Rembrandt Tours and Events Unlimited ("LAVINEX").

13. Defendant Bitsy M. Henry ("Mrs. Henry") is sued individually and as in her capacity as president and controlling shareholder of LAVINEX.
14. Defendant JOHN STEWART COMPANY ("JSC"), is a corporation and at all times mentioned herein was the property manager for the housing project in the City and County of San Francisco known as Geneva Towers Apartments with full authority to enter into the contractual arrangements with Plaintiffs described herein.
15. Defendant Sharon Brown ("Brown"), an individual, was at all times mentioned herein manager of JSC with full power to bind JSC in the contractual arrangements with Plaintiffs described herein.
16. Defendant Eli Gray ("Gray"), an individual, was at all times mentioned herein chief of security for JSC at Geneva Towers Apartments.
17. Defendant Charles Evans is and was at all times mentioned herein a Patrol Special Police Officer of the City and County of San Francisco.
18. Defendant Carlos Salgado is and was at all times mentioned herein an Assistant Patrol Special Police Officer of the City and County of San Francisco.
19. Defendant Western Security is an association the true nature of which is not known to Plaintiffs and is sued here as an association. At all times material hereto, Western Security was a participant with LAVINEX in the conduct of security operations at Geneva Towers Apartments and a participant it the wrongful acts engaged in by LAVINEX.

JURISDICTION

20. This court has jurisdiction over the subject matter of this action in that it asserts claims under the provisions of Section 1983, Title 42, United States Code. With respect to the claims asserted herein founded upon state law, this court has ancillary and pendant jurisdiction thereof.

VENUE

21. Venue is properly laid in the Northern District of California in that the claims asserted herein arose in the City and County of San Francisco.

GENERAL ALLEGATIONS

22. Plaintiffs are and at all times referred to herein were owners of Patrol Special beats created under the authority of section 35.10 of the Charter of the City and County of San Francisco and are designated by said charter provision as "patrol special police officers". Each of the Plaintiffs was at all times mentioned herein, a Patrol Special Police Officer, duly appointed by the Police Commission of the City and County of San Francisco.
23. Under the provisions of the Charter of the City and County of San Francisco, within the limits of their beats, Plaintiffs are given the exclusive right and privilege to patrol streets of the City and County of San Francisco to provide augmented police services to clients of Plaintiffs who contract with Plaintiffs for such augmented police protection. This exclusive right and privilege constitutes property or an interest in property within the meaning of the Fifth Amendment to the Constitution of the United States.
24. In accordance with the right and privilege confirmed upon Patrol Special Police Officers by the Charter of the City and County of San Francisco, Patrol Special Police Officers are entitled to charge their clients for augmented police services at such rates as the Patrol Special Police Officer and the client agree for such services.
25. Under the provisions of section 1.53, Rules and Procedures, Patrol Special Officers and Assistant Patrol Special Officers, Patrol Special Police Officers are granted the right to sell their beats subject to the Police Commission approval to third persons meeting the qualifications for appointment as Patrol Special Police Officers. Prior to the wrongful acts of the Defendants complained of herein the beats owned by Plaintiff Reyes had a value as going concerns of not less

that $1,000,000. Prior to the wrongful acts of the Defendants complained of herein the beats owned by Plaintiff Russo had a value as going concerns of not less than $1,000,000.

26. Under the provisions of sections 3.530, 3.536 and 8.105(f) of the Charter of the City and County of San Francisco, General Order T-1 of the Police Department of the City and County of San Francisco and the provisions of sections 70(a) and 70(d), California Penal Code, Chapter 10B of the San Francisco Administrative Code, and Section 1750.5, Police Code of the City and County of San Francisco, no member of the Police Department of the City and County of San Francisco or any other police department of the State of California or any political subdivision or agency thereof, may provide, within the City and County of San Francisco, the augmented police services provided by Patrol Special Police Officers, including the Plaintiffs, under contract for compensation.
27. Police officers of the City and County of San Francisco, other than Patrol Special Police Officers such as the Plaintiffs and Assistant Patrol Special Police Officers appointed to serve under Patrol Special Police Officers, are prohibited from accepting payment other than their regular salaries from the City and County of San Francisco for the performance of their duties as a police officer.
28. Casey, Minasian, Philpott, Captain No. 1, Captain No. 2, Captain No. 3, Captain No. 4, Captain No. 5, and Henry are police officers of the City and County of San Francisco. Casey, Minasian, Philpott, Captain No. 1, Captain No. 2, Captain No. 3, Captain No. 4 and Captain No. 5 and Henry are not Patrol Special Police Officer and are not Assistant Patrol Special Police Officers of the City and County of San Francisco.
29. Casey, as Chief of Police, until February, 1992, under the terms of General Order No. A-5 of the San Francisco Police Department was the Chief Executive Officer of the San Francisco Police Department.
30. Minasian, Philpott, Captain No. 1, Captain No. 2, Captain No. 3, Captain No. 4 and Captain No. 5 under the terms of

General Order No. A-5 of the San Francisco Police Department each had: 1) the responsibility for the preservation of law and order within the City and County of San Francisco and within the police district within the City and County of San Francisco to which each was assigned; 2) control, management and direction of members of the San Francisco Police Department under their command; 3) responsibility for strict observance and enforcement of the rules of the San Francisco Police Department.

31. Dempsey under the terms of General Order No. A-5 of the San Francisco Police Department had the duty to perform such duties as may be assigned by competent authority and was responsible for the training, morale, discipline, and motivation of members assigned to their supervision.
32. Patrol Special Police Officers, including each of the Plaintiffs, and Assistant Patrol Special Police Officers, are "members" of the San Francisco Police Department as that term is used in the General Orders of the San Francisco Police Department and are "peace officers" within the meaning, respectively of sections 830.1 and 830.6 of the California Penal Code.
33. Russo, as a member of the San Francisco Police Department, was assigned to Park Station and Minasian and Dempsey, by virtue of their positions as Captain and Sergeant assigned to Park Station had supervisory control and authority over Russo in the performance of his duties as a Patrol Special Police Officer of the City and County of San Francisco.
34. Under the terms and conditions of the Rules and Procedures, Patrol Special Officers and Assistant Patrol Special Officers, Patrol Special Police Officers, with respect to their contractual relations with their clients, are required to disclose only a listing of their clients and then only upon request of the commanding officer of the Patrol Special Police Officer.
35. Plaintiffs are members of the San Francisco Patrol Special Police Officers Association which had commenced an action on January 11, 1990 for the issuance of a Petition For Writ Of Mandate, Case No. 914756, seeking the issuance of an extraordinary writ to compel the City and County of San

Francisco, the then Chief of Police Frank Jordan, the Police Commission of the City and County of San Francisco, and the then incumbent commissioners to cease abuse of their discretion in denying San Francisco Patrol Special Police Officers the status, training, supervision and management to which they were entitled under the laws of California and the Charter of the City and County of San Francisco. Plaintiffs have been obvious and vocal in their complaints to the Police Commission of the City and County of San Francisco and Superior Officers.

36. On or about June 30, 1990, Russo received at his business address of San Francisco Patrol Special Police, 1827 Haight Street #12, San Francisco, CA 94117, a letter addressed to his business name of "San Francisco Patrol Special Police" directed "ATTN: Captain Philpott" (the "Philpott Letter"). The letter was authored by a client under contract to Russo for augmented police services to be provided by Russo as a Patrol Special Police Officer. The letter described as its subject: "...Off-duty Patrol Contract Services" and read, in pertinent part:

> "Dear Captain:
>
> "In reference to the contract services that I signed today, please be advised that I cannot authorize the total cost of $66,924.00. The property does not have 'unlimited' funds available.
>
> "This office will be monitoring the situation on a weekly basis to determine the length and continuance of the extra service."

The Philpott letter clearly disclosed that Philpott, in violation of the provisions of the Charter of the City and County of San Francisco, the Police Code and the California Penal Code, was accepting significant sums of money to provide private patrol service within the City and County of San Francisco.

37. In and about February, 1991, Russo attended an open public community meeting of the Police Commission of San Francisco held in the Park Station police district (the "Meet-

ing"). At that meeting a gentlemen of Arab ethnic background was present. This gentlemen was a friend and acquaintance of Russo and is referred to here for purposes of identification as "Mr. Doe". At all times mentioned herein, Russo was and is married to a woman of Arab heritage.

38. At the Meeting, Casey knew of the friendship and acquittance between Mr. Doe and Russo and of the Arab heritage of Russo's wife. Russo is Hispanic, of Puerto Rican heritage. Reyes is Hispanic of Mexican heritage. At all times mentioned herein, Casey and the other defendants knew of the Hispanic heritage of Russo and Reyes.
39. At the Meeting, Mr. Doe questioned Casey regarding the status of Patrol Special Police Officers and Assistant Patrol Special Police Officers as peace officers under the provisions of section 830.1 and section 830.6, California Penal Code and the scope and breadth of authority of Patrol Special Police Officers and Assistant Patrol Special Police Officers. Casey was reluctant and evasive in his answers to Mr. Doe's questions and embarrassed at having publicly to respond to questions regarding matters relating to Case No. 914756. Casey attributed the questioning by Mr. Doe to instigation by Russo and held Russo responsible for the questioning by Mr. Doe. The questioning of then Chief of Police Casey at a public community meeting of the Police Commission of San Francisco is a protected right of any citizen, such as Mr. Doe and Russo, under the First Amendment of the United States Constitution guaranteeing freedom of speech, association and the right to petition for redress of grievances.
40. The Plaintiffs are informed and believe and therefore allege that Casey, immediately following the conclusion of the Meeting, instructed Minasian, as Russo's commanding officer at Park Station, to exact punishment upon Russo for the questioning to which Casey had been subjected at the Meeting. Plaintiffs are so informed by Sergeant George Toy, San Francisco Police Department, who, at the time of the meeting was assigned to duty at the Park Station of the San Francisco Police Department.
41. Upon information provided by Sergeant Toy, Plaintiffs al-

lege that Minasian returned to Park Station following the "very paranoid and hysterical ... on a mission from the Chief". On the evening of the Meeting, Sergeant Toy was acting Lieutenant of Park Station. Sergeant Toy reported that Minasian called him and the sergeants then on duty, including Defendant Dempsey to a meeting in Minasian's office. Minasian told Sergeant Toy and the other sergeants there assembled, including Dempsey: "Russo! Russo took the Chief on in a hearing! We can't believe it! The chief was very upset! Russo!, that Arab!". "Russo and the Arab took the Chief on in the hearing and the Chief was very embarrassed and very pissed off". Minasian told Sergeant Toy and the other sergeant, including Dempsey that Mr. Doe had forced the Chief to answer questions publicly regarding Patrol Special Police Officers. Minasian told Sergeant Toy and the other sergeants, including Dempsey, that Casey had, in effect, "put out a hit on Russo" and indicated that he, Minasian" was there to fulfill that hit. In addition to the anger and embarrassment of Casey, Minasian told Sergeant Toy and the other sergeants, including Dempsey, in an apparent reference to the letter received by Russo on or about June 30, 1990 documenting Philpott's demand for the payment by Russo's client of over $66,000 to provide "off-duty" patrol services to Russo's client that "we [meaning Minasian and Casey] believe he [Russo] has the goods on a Captain and a Sergeant, some kind of corruption, we don't know what it is yet." Minasian further told the assembled sergeants "Thank god it's not me. Can't be me." The captain upon whom Russo "had the goods" was Philpott.

42. Minasian further told the assembled sergeants that Minasian and Casey were very fearful that an Assistant Patrol Special in Russo's employ was making arrangements to purchase a beat owned by another Patrol Special Police Officer and Casey did not want that to happen. Minasian told Sergeant Toy and the other assembled sergeants, including Dempsey that Casey and Minasian wanted to get everything they could on Russo and wanted him watched very closely. Minasian then told Sergeant Toy that the sergeants were to address the line up of officers at Park Station and tell them that everyone

had to "know what Russo was doing".

43. Based upon statements of Sergeant Toy to Sergeant Kilroy of the Management Control Division, San Francisco Police Department, made in a formal interview on June 20, 1991, Plaintiffs are informed and believe and therefore allege that the purpose of Casey's instruction to Minasian and Minasian's instructions to the assembled sergeants was to cause the officers of Park Station in particular and the San Francisco Police Department to ostracize Russo, refuse him back up and support and "to get him [Russo] hurt or killed".

44. Dempsey, in response to the direction of Minasian, volunteered to be the sergeant to address the line-ups at Park Station and did in fact implement the instructions of Minasian by addressing the line-up and conspiring with Minasian, Casey, Captains Nos. 1, 2, 3, 4, 5 and Philpott to punish Russo for the questioning to which Casey had been subjected at the Meeting and to silence and quash any complaints by Russo or reports concerning the information relating to Philpott's demand for the payment of over $66,000 from Russo's client.

45. Following the meeting between Minasian and the assembled sergeants, Minasian, Dempsey, Casey, Captains No. 1, 2, 3, 4, and 5 undertook a campaign of harassment and interference with the business operations and contracts of Russo. Minasian, subsequent to the meeting with the assembled sergeants, stated in the presence of Sergeant Toy that contracts between Russo and two of his clients, St. Mary's Hospital and McDonald, had been cancelled because of the interference of Casey, Minasian, Dempsey, Philpott, Captains No. 1, 2, 3, 4, and/or 5. Specifically Minasian stated:

> "Russo!, Well, anyway, we've caused him to lose his two largest accounts."

46. Plaintiffs are informed and believe and therefore allege that the method by which Casey, Minasian, Dempsey, Philpott, Captains No. 1, 2, 3, 4, and/or 5 was to institute a groundless complaint to Management Control Division reporting that Russo was using unqualified and unauthorized personnel to provide assistance to him on the St. Mary's Hospital and McDonald's contracts and thereby cause Russo's clients

to be exposed to such groundless charges and subjected to interrogation suggesting that Russo was not performing his contractual obligations in a fit manner and was otherwise unfit to provide the services for which he had contracted. Following contact by Management Control Investigator Sergeant Ottone representatives of St. Mary's Hospital and McDonald's informed Russo that they were cancelling their contractual arrangements with Russo.

47. Plaintiffs are informed, based upon Sergeant Toy's statements to Sergeant Kilroy, Management Control Division, that Casey, Minasian, Philpott, Dempsey, Captains No. 1, 2, 3, 4, and/or 5 in furtherance of their campaign of harassment of Russo began a systematic contact of all of his clients for the purpose of causing Russo's clients to cancel contracts with him. Said defendants did so through statements of rumor, untruths and innuendo concerning Russo's integrity, financial soundness, legal authority to operate and his overall general qualifications to perform the services which he contracted to perform, either falsely stating or implying to the persons contacted that he lacked integrity, financial soundness, general qualifications for his contracted services and/or the legal authority to undertake the services for which he contracted. Plaintiffs are informed and believe and therefore allege that this campaign of harassment continues unabated.

48. In furtherance of the campaign of harassment undertaken following the Meeting, Dempsey, on April 11, 1991 with the knowledge, approval and authorization of Minasian, Casey, Philpott, Captains No. 1, 2, 3, 4 and/or 5, enlisting the cooperation of undercover police officer Paul Lee ("Lee") sought to entrap and frame Russo on a narcotics charge. On that date, at 2115 hours, at 688 Lyons St. in the City and County of San Francisco, adjacent to the corner of Lyon Street and McAllister Streets in San Francisco, Plaintiffs are informed and believes and therefore allege that Dempsey arranged for Lee to conspicuously offer to passersby drugs for sale. Russo has a contract for the provision of augmented police services to the owner and residences of 688 Lyon Street and was known by Casey, Minasian, Philpott,

Dempsey, Captains No. 1, 2, 3, 4, and/or 5 to have such contractual relationships.

49. Shortly before 2115 hours on April 11, 1991, Russo received a call for assistance from a Mr. Wong at 688 Lyon reporting a man trying to sell him drugs at that location. On his arrival at 688 Lyon, Russo found Lee, in plainclothes, in obvious possession of marijuana and cash indicating possession for sale. Russo placed Lee under arrest. Russo called police department dispatch requesting police department unit to transport Lee for booking, in accordance with the general orders of the San Francisco Police Department. Sergeant Dempsey responded to the request for transport and transported Lee to Park Station.

50. During Russo's preparation of his report of the arrest of Lee and Russo's attempts to inventory the drugs seized from Lee, Dempsey subjected him to constant harassment and interruption with the intended purpose by Dempsey of inducing Russo to make an error in the count of the drugs seized from Lee. In doing so, Dempsey, who, to the knowledge of Russo, had not been a witness to the arrest of Lee repeatedly insisted that Russo include in the report being prepared by him false statements regarding what had transpired in the confrontation and arrest of Lee. Russo refused and Dempsey increased his harassment and interruption. Minasian, Dempsey, Casey, Philpott, Captains No. 1, 2, 3, 4, and/or 5 had no reason to believe that Russo was dishonest or subject to corruption.

51. On April 22, 1991, while Russo was in the Northern Station of the San Francisco Police Department, his personal automobile, in the protected parking lot of the Northern Station was burglarized. Plaintiffs are informed and believe that the burglary of the automobile was undertaken at the instance of Minasian, Dempsey, Casey, Philpott, Captains No. 1, 2, 3, 4, and/or 5 for the purpose of locating the Philpott Letter which Plaintiff had stored in files located in the trunk of his private automobile. Plaintiffs form this belief because during said burglary, the only two items taken from Russo's automobile were his personal note book and $600 in United States Currency. The notebook was later shown

by found in the possession of Management Control Investigator Sergeant Kilroy who exhibited the notebook to Russo at the time of an interview being conducted by Kilroy with respect to Sergeant Toy. Further, following Russo's demand to Kilroy for return of the notebook and Russo's official complaint to the San Francisco Police Department regarding the burglary of his private automobile, Sergeant Kilroy telephoned Russo, told Russo he thought he, Kilroy, had located Russo's $600 and inquired if Russo would forget matters if the money were returned. Russo had made notations in his notebook of statements made to him by Sergeant Toy regarding the Meeting. Shortly after the theft of Russo's notebook, Sergeant Toy was the subject of formal charges by the San Francisco Police Department for having disclosed the statements made by Minasian to the assembled sergeants following the Meeting. From the foregoing and the orders by Casey to Minasian following the Meeting, and the interference with Russo's clients set forth above, and Minasian's statements overheard by Sergeant Toy regarding success in causing Russo to lose his two largest accounts, Plaintiffs believe and allege that Russo's automobile was burglarized by Casey, Minasian, Dempsey, Philpott, Captains No. 1, 2, 3, 4, and/or 5 or personnel of the San Francisco Police Department working in conjunction with them and with their knowledge and approval. Kilroy has never returned to Russo the $600 he "believed" he had found.

52. Plaintiffs are informed and believe and therefore allege that, Dempsey with the knowledge and approval of Casey, Minasian, Philpott, Captains No. 1, 2, 3, 4, and/or 5, on April 27, 1991, engaged the participation of one David J. Chapman, Sr., in the continuation of the pattern of harassment of Russo begun at the instruction of Casey and Minasian following the Meeting. Plaintiffs are informed and believe and therefore allege that Chapman was convicted on June 23, 1978 of violation of Penal Code Section 187, Murder, and sentenced to nine years in state prison. Plaintiffs are also informed and believe and therefore allege that on April 27, 1991, Chapman Sr.'s son, David Jay Chapman, Jr. was in the custody of the San Francisco Police Department on charges of

possessing cocaine for sale and was under investigation as a suspect in connection with a murder which occurred in January, 1991. Plaintiffs are informed and believe and therefore allege that Chapman Jr. was subsequently convicted on his plea of guilty to the cocaine charge and was convicted of violations of section 187, California Penal Code, Murder. Plaintiffs are informed and believe and therefore allege that Casey, Minasian, Dempsey, Philpott, Captains No. 1, 2, 3, 4, and/or 5, with the agreement and participation of each of them, used threats and/or promises in connection with favorable treatment of Chapman, Jr. to induce Chapman, Sr. to participate in their pattern of harassment directed at Russo.

53. On April 27, 1991, at 1950 Russo again received a pager message that there was trouble at the same building at which he had arrested undercover Lee on April 11, 1991. The report was that five or six males were apparently attempting to gain entrance to the building entrance at 688 Lyons by shaking the gate. Upon his arrival at the building containing the address of 688 Lyon, 666 Lyon and 644 Lyon St., at the corner of Lyon and McAllister, Russo observed a group of five or six males cross Lyon Street from in front of 688 Lyon to the opposite corner and begin a dice game. As Russo began to write a citation for a truck parked on the sidewalk so that it blocked the entrance to his client's building, the group of five or six males re-crossed the street and Chapman, Sr. then threatened him, got into the truck for which Russo was writing a citation, started the engine and deliberately backed the truck toward Russo with the obvious intention of pinning Russo between the back of Chapman's truck and the side of Russo's car. Russo drew his pistol, announced that Chapman, Sr. was under arrest. Chapman, Sr. fled the scene and was later arrested by Sergeant Rockeforte in the truck in the company of two companions. A search of the truck resulted in the discovery of rock cocaine and a loaded pistol in the truck. Chapman, Sr. was transported to Park Station where he was released from custody upon the order of Dempsey after Dempsey had conferred with Minasian by telephone.

54. On the next day, April 28, 1991, at the intersection of Lyon

and McAllister, Russo again came in contact with Chapman, Sr. a convicted murderer with a history of drug dealing. On this occasion, Chapman, Sr., continuing the pattern of harassment aforesaid told Russo that Russo's supervisor, i.e. Dempsey, "wants me to fight you", i.e. Dempsey has set the murderer lose on Russo.

55. In approximately May, 1991, Russo was contacted by the John Stewart Company as representative of the owner of Geneva Towers Apartments. JSC was the manager of Ammel Cooperative Homes within the Park Police District and within the confines of the beats owned by Russo. Because of his satisfactory performance of services for John Stewart Company in connection with Ammel Cooperative Homes, JSC solicited a proposal from Russo for providing similar services at Geneva Towers Apartments. Because Geneva Towers Apartments is within the confines of the beats owned by Reyes, in accordance with the provisions of the Charter of the City and County of San Francisco and the regulations of the Police Commission regulating Patrol Special Police Officers, Russo referred the contact from John Stewart Company to Reyes. Reyes requested, and Russo agreed, that Russo undertake the representation of Reyes in negotiations with JSC.

56. On or about May 30, 1991 Reyes and Russo reached agreement with JSC for a contract to provide augmented police services with an agreed upon date for the start of performance by Reyes and Russo under the contract.

58. Casey, Minasian, Dempsey, Philpott, Captains No. 1, 2, 3, 4, and 5, shortly after the commencement of negotiations between Reyes and Russo on the one hand and JSC sought to interfere with business relationship between JSC and Russo and Reyes, in furtherance of the harassment undertaken at the direction of Casey.

57. Shortly after negotiations began between Russo and Reyes and JSC, Brown began receiving telephone calls from Captains No. 1, 2, 3, 4, and 5, described by her to be the captains of various police districts in the City and County of San Francisco demanding to know why they had not been given the opportunity to bid on the work for which Russo

and Reyes were submitting proposals. Plaintiffs are informed and believe and therefore allege that Philpott and Minasian also contacted Brown and demanded to know why he had not been permitted to bid upon the contract, plaintiffs' information being that Brown was contacted by the captain of Ingleside Station with such a demand and at the time Philpott was the captain at Ingleside Station and Minasian was a captain of one of the police districts and actively engaged at this point in time in contacting accounts and customers of Russo.

58. As the agreed upon date for the commencement of services by Reyes and Russo to Geneva Towers Apartments approached, in addition to continuing telephone calls from the various district captains, including Philpott and Minasian, Brown began to receive telephone calls from Casey's office asking "why they had not been called to bid" on the contract. Brown, upon her initial contacts with district captains at Potrero Station and Ingleside Station had been given favorable recommendations concerning Reyes. Following her contact with Casey's office, the favorable recommendations were withdrawn, plaintiffs are informed and believe, upon the instruction of Casey in retaliation for the exercise by Russo and Mr. Doe of their First Amendment rights to free speech, petition for redress and association and in the racially motivated desire of Casey "to get the Arab".

59. Brown was falsely told by Casey's office that Reyes and Russo, as Patrol Special Police Officers, would need a state license to provide services covered by their contracts. Brown was falsely told by Casey's office that Reyes and Russo were not authorized to cooperate in providing services to Geneva Towers Apartments under the contract with JSC.

60. From statements made to her by the district captains, including Philpott and Casey's office, Brown concluded and was intended to so conclude by the district captains and Casey, that if the contract for Geneva Towers were not given to them and the contract with Reyes and Russo remained in force, they would cause the San Francisco Police Department to withhold regular police services to Geneva Towers Apartments.

61. At the request of Casey's office and without the knowledge and authorization of Reyes and Russo, Brown sent to Casey a copy of the contract and proposal from Reyes and Russo to JSC.

62. Following receipt of the contract and proposal at Casey's office, Captain No. 1 contacted Brown by telephone and, on behalf of Casey, Philpott, Minasian and Captains No. 2, 3, 4, and 5, disparaged the proposal and contract of Reyes and Russo, questioning whether Russo and Reyes could perform the services covered by the contract, implying that they could not legally do so and again implying that if JSC continued with its contract with Reyes and Russo, regular police services would be withheld from Geneva Towers Apartments.

63. Brown was told by Captains No. 1, 2, 3, 4, 5, Philpott and Casey's office, with the knowledge and authority of Casey, that a group other than Russo and Reyes should be selected to provide augmented police protection for Geneva Towers Apartments, a group consisting of off-duty San Francisco Police Officers. Brown was told that this group would be supported by and was endorsed by Casey as chief of police. This group consisted of LAVINEX, Mrs. Henry, Henry, Salgado and Evans. Plaintiffs are informed and believe and therefore allege that this group was a "front" for Casey, Philpott, Minasian and Captains No. 1, 2, 3, 4, and 5, one or more of whom Plaintiffs believe and therefore allege is the beneficial owner of all rights acquired by this group in connection with Geneva Towers Apartments.

64. As a result of the acts aforesaid of Casey, Minasian, Philpott, Captains No. 1, 2, 3, 4 and 5 and Dempsey, Brown and JSC breached its contract with Reyes and Russo and engaged LAVINEX, Mrs. Henry, Henry, Salgado and Evans in place of Russo and Reyes. Neither LAVINEX, Mrs. Henry, Henry, Salgado or Evans could lawfully engage in the performance of the services which they contracted to perform in the place of Reyes and Russo. The license under which LAVINEX, Mrs. Henry, Henry, Salgado and Evans previously purported to operate at Geneva Towers Apartment has been cancelled and no new license has been issued.

65. Casey and/or Captain No. 1, with the knowledge and approval

of Captains No. 2, 3, 4, 5, Minasian and Philpott, utilized the contract and proposal of Reyes and Russo and the methods, plans and procedures devised by Reyes and Russo, without the permission and authority of Russo and Reyes, as the contract, plan and proposal for the LAVINEX et al contract with JSC.

66. In furtherance of the orders of Casey and the implementation of the "hit" ordered against Russo, Casey and Minasian have undertaken to wrongfully deny Russo approval of an appointment of Assistant Patrol Special Police Officers to assist him. Under the provisions of the Charter of the City and County of San Francisco the Police Commission appoints Patrol Special Police Officers while the Chief of Police is given the authority over appointment of Assistant Patrol Special Police Officers. Under the rules and regulations of the San Francisco Police Department, a Patrol Special Police Officer seeking the appointment of an Assistant Patrol Special Police Officer is required to submit a written application to his commanding officer for approval and forwarding to the Chief of Police. Since the time of the Meeting, Russo has forwarded not less than three requests for appointment of Assistant Patrol Special Police Officers for employment on his beats. Those requests have been submitted by Russo to his commanding officer, Minasian. Notwithstanding that the applicant for appointment on each such request has been of excellent qualification, Minasian and Casey failed to act upon such applications, neither rejecting or approving the appointment. In one instance, the applicant submitted by Russo had previously been approved for appointment and was awaiting notification of his appointment date as an Assistant Patrol Special Police Officer under application by another Patrol Special Police Officer, when the applicant was submitted for approval as an assistant under Russo's authority, said Defendants refused and failed to process the application and appoint the assistant.
67. As a direct and proximate result of the lose of the Geneva Towers Apartments contract, Russo and Reyes have suffered damages in an amount of not less than $2,500,000.
68. As a direct and proximate result of the lose of the St. Mary's

Hospital and McDonald's contracts, Russo has suffered damages in an amount of not less that $1,000,000.

69. The actions of the defendants were malicious, fraudulent, corrupt, oppressive and constitute despicable conduct for which punitive damages in an amount to be determined at trial.

FIRST CLAIM FOR RELIEF
(Violation of Section 1983, Title 42, U.S.C)
(Casey, Minasian, Dempsey, Philpott, Captains No. 1, 2, 3, 4, 5)

70. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 69 above.

71. As members of the San Francisco Patrol Special Police Officers Association ("The Association"), Reyes and Russo were visibly active in asserting their rights as Patrol Special Police Officers and beat owners to the exclusive right granted them by the City and County of San Francisco, which exclusive right precluded members and officials of the San Francisco Police Department, including Casey, Minasian, Philpott, Dempsey, Captains No. 1, 2, 3, 4, and 5, and Henry from engaging in the business of providing the services which under the Charter of the City and County of San Francisco could only be provided by duly appointed Patrol Special Police Officers and their duly appointed Assistant Patrol Special Police Officers. Such assertion of rights by Plaintiffs included maintenance through The Association of the aforesaid petition for issuance of a writ of mandate, written complaint and inquiry within the Police Department petitioning department officials, including Casey, for the enforcement of Plaintiffs' exclusive rights aforesaid, attendance at public meetings of the Police Commission. Further, Plaintiffs sought to enforce their exclusive rights by joining together with other beat owners as members of The Association.

72. The actions of Plaintiffs described in the preceding paragraph are privileged and protected under the provisions of the First and Fourteenth Amendments to the Constitution of the United States granting to Plaintiffs the rights of free speech, freedom to associate with others, and the right to

petition for redress of grievances. All of the foregoing rights are clearly established and recognized rights under the Constitution of the United States within the meaning of section 1983, Title 42, United States Code.

73. In taking the actions aforesaid Casey, Minasian, Dempsey, Philpott, Captains No. 1, 2, 3, 4, and 5 did so, acting under color of the laws of the state of California and its political subdivision the City and County of San Francisco to punish Plaintiffs and each of them for the exercise by them of their First and Fourteenth Amendment rights of free speech, freedom of association and the right to petition for redress of grievances. Said defendants further acted as they did to punish Russo for his association with Mr. Doe and with other members of The Association, for Russo's perceived (by Casey) questioning of Casey at a public meeting of the Police Commission through Mr. Doe as surrogate. Said defendants further acted as they did to punish Reyes for his association with Russo and with other members of The Association. The actions taken by said defendants were intended by them and each of them to be a deterrent to the continued exercise by Plaintiffs of their rights of free speech, freedom of association, to petition for the redress of grievances and as a warning and example to other Patrol Special Police Officers of what will happen to them should they seek to exercise their same rights.
74. In acting as they did, Casey, Minasian, Philpott, Dempsey, Captains No. 1, 2, 3, 4, and 5 did so because Russo is perceived by Casey and Minasian as being "Arab" or Hispanic and because Reyes is Hispanic. In so acting, said defendants, under color of state law, have acted so as to deprive Russo and Reyes of equal protection of law under the provisions of the Fourteenth Amendment to the Constitution of the United States.
75. The actions aforesaid of Casey, Minasian, Dempsey, Philpott, Captain No. 1, Captain No. 2, Captain No. 3, Captain No. 4, Captain No. 5 constitute a deprivation by said defendants of clearly established constitutional rights of Plaintiffs within the meaning of section 1983, Title 42, United States Code.
76. In performing the acts aforesaid, each of Casey, Minasian,

Dempsey, Philpott, Captain No. 1, Captain No. 2, Captain No. 3, Captain No. 4 and Captain No. 5 did each act performed by him or her with the knowledge, approval and/or ratification of each of the others and as agent for each of the others.

77. WHEREFORE, Plaintiffs demand entry of judgment against Casey, Minasian, Dempsey, Philpott, Captain No. 1, Captain No. 2, Captain No. 3, Captain No. 4 and Captain No. 5, jointly and severally:

a. for damages in the amount sustained by Plaintiffs and each of them for injury to their business and persons in an amount to be determined at trial but not less than $2,500,000 million dollars as to each Plaintiff;

b. for an injunction against the defendants and each of them from continuing to act in violation of the rights of Plaintiffs;

c. for exemplary and punitive damages in an amount to be determined at trial;

d. for attorney's fees and costs of suit.

SECOND CLAIM FOR RELIEF
(INTERFERENCE WITH BUSINESS ADVANTAGE)
(ALL DEFENDANTS-EXCEPT JSC, BROWN, GRAY)

78. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 69 above.

79. In doing the acts aforesaid, each of the defendants knew of the existence of the contractual and business relationship between the Reyes and Russo on the one hand and JSC on the other hand and wrongfully acted for the purpose and with the intention of interfering with said contractual and business relationship. In doing the acts aforesaid, each of the defendants knew of the existence of the contractual and business relationships between Russo and St. Mary's Hospital and McDonald's and wrongfully acted for the purpose and with the intention of interfering with said contractual and business relationship. By their acts aforesaid, defendants and each of them succeeded in destroying the contractual and business relationships aforesaid.

80. As a consequence thereof, Plaintiffs and each of them have

sustained damages in an amount of not less than $2,500,000 each all as a direct and proximate result of the wrongful conduct of the defendants and each of them.

81. Wherefore Plaintiffs demand entry of judgment against the defendants and each of them, jointly and severally, as follows:

a. for damages in the amount sustained by Plaintiffs and each of them for injury to their business and persons in an amount to be determined at trial but not less than $2,500,000 million dollars as to each Plaintiff;

b. for an injunction against the defendants and each of them from continuing to act in violation of the rights of Plaintiffs;

c. for exemplary and punitive damages in an amount to be determined at trial;

d. for attorney's fees and costs of suit.

THIRD CLAIM FOR RELIEF
(UNFAIR TRADE PRACTICES-TRADE SECRETS)
(ALL DEFENDANTS)

82. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 70 above.

83. The proposal, contract, plans and procedures set forth in Plaintiffs proposal and contract with JSC constituted a "trade secret" within the meaning of Section 3426.1, California Civil Code, in that they derived independent economic value, actual and potential, from not being generally known to the public or other persons who could obtain economic value from their use and were subject to reasonable efforts under the circumstances to maintain the secrecy of them.

84. In utilizing the proposal, plans and procedures developed by the Plaintiffs for JSC in connection with the Geneva Towers Apartments as the proposal, form of contract and method of proceeding in the implementation of their competing bid for services at Geneva Towers Apartments, defendants and each of them misappropriated trade secrets of the Plaintiffs.

85. Wherefore, Plaintiffs demand entry of judgment against defendants and each of them, jointly and severally, as follows:

a. for an injunction, preliminary and permanent against the

continued use of Plaintiffs' plans and procedures;

b. for damages sustained by Plaintiffs and each of the in a sum of not less than $2,500,000;

c. for an amount equal to the amount by which the defendants and each of them have been enriched as a result of use of Plaintiffs' proposal, plans, contract and specifications;

d. for attorneys' fees and costs of suit.

FOURTH CLAIM FOR RELIEF
(UNFAIR BUSINESS COMPETITION-SECTION 17200, B&P)
(ALL DEFENDANTS)

86. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 85, inclusive.

87. The acts aforesaid of the defendants and each of them constitute unfair competition within the meaning of section 17200, Business & Professions Code.

88. Wherefore, Plaintiffs demand entry of judgment against the defendants and each of them, jointly and severally, as follows:

a. for a preliminary and permanent injunction prohibiting defendants from continuing their unfair competition;

b. for an order requiring defendants and each of them to deliver to Plaintiffs any and all moneys or property, real or personal, acquired by the defendants and each of them as a result of such unfair competition.

FIFTH CLAIM-BREACH OF CONTRACT
(JSC, BROWN, GRAY)

89. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 88, inclusive.

90. On or about May 30, 1991, Brown, on behalf of herself, Gray and JSC orally told Russo on his own behalf as and as the agent for Reyes that Russo and Reyes had the contract for augmented police services at Geneva Towers Apartments and that they should be staffed and ready to begin operation on June 6, 1991. Brown further told Russo that she was processing an emergency award of the contract to Russo and Reyes as minority contractors. The start date of June 6, 1991, was subsequently delayed by Brown on behalf of JSC. It was only on or after July 12, 1991 that Plaintiffs learned

that the reason for the delay in start date was the interference by Casey, Minasian, Dempsey, Philpott, Captains No. 1, 2, 3, 4, and/or 5 aforesaid. On July 12, 1991, Plaintiffs were told by Brown, on her own behalf and on behalf of Gray as director of security services for JSC, that JSC was refusing to go forward with the performance of the contract between JSC on the one hand and Russo and Reyes on the other hand.

91. By virtue of said refusal, JSC, Brown and Gray are in breach of the contract aforesaid and Plaintiffs have sustained damages in the amount of not less than $2,500,000.

92. Wherefore, Plaintiffs demand entry of judgment against the JSC, Brown and Gray, jointly and severally, in the sum of $2,500,000, together with the costs of suit herein.

JURY TRIAL DEMAND

93. As to all issues triable to a jury, Plaintiffs demand trial by jury.

Dated: July 13, 1992.

LAW OFFICES OF ROBERT E. NOEL
BY: /s/
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Attorneys for Plaintiffs.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN RUSSO, JR. and SAMUEL J. REYES,

Plaintiffs,

Vs.

WILLIS CASEY, et al,

Defendants.

CASE NO. C92-2686 JPV.

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

TRIAL DATE: NONE.

JURY TRIAL DEMANDED.

Plaintiffs, Steven Russo, Jr. and Samuel J. Reyes, by their under signed attorneys, hereby give notice that they appeal to the United States Court of Appeals, Ninth Circuit, from the order of October 19, 1992 granting motion to dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure, the order granting the motion to dismiss filed March 12, 1992 and entered March 15, 1993 and the judgment thereon.

Dated: April 7, 1993.

Law Offices of Noel & Knoller
By: /s/
Robert E. Noel
Attorneys for Plaintiffs

DECLARATION OF SERVICE

I, Robert E. Noel, declare under penalty of perjury, under the laws of the State of California, in the City of San Francisco, California on April 7, 1993, that the matters set forth herein are true and correct, based upon my personal knowledge thereof:

I am over the age of eighteen years and a resident of the City and County of San Francisco. I am not a party to the above-entitled action. On this day, I served the document(s) described below upon those persons and parties hereafter set forth by placing a copy of each such document in an envelope bearing the name and address of the person and party upon whom it was being served and placed said envelope in a United States Postal Service collection box with first class postage affixed thereto in the City of San Francisco, California:

DOCUMENTS SERVED: Notice of Appeal.

PERSONS AND PARTIES SERVED AND ADDRESS AS TO EACH TO WHICH WAS DIRECTED:

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San Francisco, CA 94111

Dated: April 7, 1993.

By: /s/
Robert E. Noel